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No. 91-1351

IN THE
SUPREME COURT OF THE UNITED STATES

Ooctober Term, 1991

STATE OF ARIZONA,

Petitioner,

vs.

DAVID L. TAYLOR,

Respondent,

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES SUPREME COURT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does the search incident to arrest exception to the Fourth Amendment permit a full search of the person where the person searched has been detained solely to issue a misdemeanor citation in lieu of a physical arrest?

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No. 91-1351

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1991

STATE OF ARIZONA,

Petitioner,

vs.

DAVID LESLEY TAYLOR,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES SUPREME COURT

RESPONDENT'S BRIEF IN OPPOSITION

Respondent, David Lesley Taylor, respectfully requests that this Court deny the Petition for Writ of Certiorari which seeks review of the decision of the Arizona Court of Appeals entered on November 20, 1990.

OPINION BELOW

Respondent David Lesley Taylor filed an appeal to the Arizona Court of Appeals for Division Two following conviction of the charge of unlawful possession of hashish. The issue appealed was the denial of his motion to suppress the evidence obtained in violation of his rights under the Fourth Amendment to the United States Constitution as well as his rights under the State

Constitution. The facts giving rise to the motion to suppress, as outlined by the Arizona Court of Appeals, are as follows. On February 12, 1989, two police officers saw respondent drinking a beer in a Tucson city park, a violation of a municipal ordinance. They approached him intending to write a citation for that offense. One of the officers searched respondent and found hashish folded in a paper in his billfold. Had that hashish not been found, both officers agreed that respondent would have been free to leave. In addition, both officers agreed that they had no reason to believe respondent was armed or dangerous.

The court framed the issue raised by the facts as "whether officers are free to search anyone they might arrest but have no intention of arresting under a search incident to arrest theory." (Petitioner's Appendix A at A-2). The court then based its decision on the rulings of this Court in United States v. Robinson, 414 U.S. 218, 94 S.Ct. 467, 38 L.Ed. 2d. 427 (1973), and Gustafson v. Florida, 414 U.S. 260, 94 S.Ct. 488, 38 L.Ed. 2d. 456 (1973). The court stated that under Robinson a full search of the person incident to a custodial arrest, defined in Robinson as "the taking of a suspect into custody and transporting him to the police station," 414 U.S. at 235, is authorized, even without reason to believe that weapons or destructible evidence would be present, in part because the arrest itself would create a motivation to use a weapon or destroy evidence. The court then reasoned that that rationale cannot apply when a person is not being taken into custody to be

booked for an offense and that nothing in Robinson or any other authority cited by the State supported the proposition that police are "free to search anyone they choose to cite for a misdemeanor or that they could arrest although they do not intend to." (Petitioner's Appendix A at A-4). Although not the basis for its holding, the court also expressed its concern that such a proposition would invite pretextual arrests and incident searches, citing to 2 W. LaFave, Search & Seizure §5.2(h)(2d. ed. 1987), as well as its concern that in the present case the only law enforcement interest being served was curiosity. As the search was not justified as a search incident to arrest or any other basis, the court found the search to be unreasonable and ruled that the hashish thereby discovered must be suppressed. (Petitioner's Appendix A at A-4 to A-5).

STATEMENT OF JURISDICTION

As set forth by Petitioner, this Court has jurisdiction under United States Constitution Article III, Section 2 and 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The pertinent part of the Fourth Amendment reads as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizures, shall not be violated . . . .

The pertinent part of the Fourteenth Amendment reads as follows:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; . . .

STATEMENT OF THE CASE

On February 12, 1989, at about 5:40 p.m., Officers Robert Jimenez and Chris Morand of the Tucson Police Department were driving by a city park when they observed respondent David L. Taylor talking to some youngsters and holding a can of beer. Respondent also had a small dog on a leash with him. Officer Jimenez walked up to respondent and saw that the can was a can of Budweiser beer and that it was open. He asked respondent to put the can down, and respondent complied. Officer Jimenez then issued a citation to respondent for having an open can of beer in the park without a malt beverage permit, a violation of the Tucson City Code. Officer Jimenez advised respondent that he was under arrest when he was issuing the citation. However, he was intending that respondent sign the citation with a promise to appear later in court and then let him go on his way. After Officer Morand saw Officer Jimenez writing out the citation, he conducted a full search of respondent. He found a white folded piece of paper in respondent's wallet containing a brown substance which he believed to be hashish. Neither officer saw any bulges or had any reason to believe that respondent had any weapons or an illegal substance on his person, and the search was not motivated by any belief that respondent had any alcohol or weapons. The search was thus not a pat down search for weapons but rather a full search according to Officer Morand, to "see what he might find," not related to the offense for which the citation was issued. Officer Morand conducted the search to

check for anything of evidentiary nature. He was not simply looking for identification as Officer Jimenez was already issuing a citation with that information. He stated that in the situation where a citation was being issued, police policy gave the officer the discretion as to whether or not to conduct a full search incident to arrest. Officer Morand had made approximately 200 "arrests" for similar type offenses, and had conducted full searches incident to those arrests in approximately one-half of those cases. In those cases where he did conduct a search, he had a basis. In this case his reason for conducting the search was that he had arrested respondent in the past for concealed weapons and narcotics. The intent of both officers was simply to cite respondent and release him and Officer Jimenez would have done so had Officer Morand not found the hashish in respondent's wallet. It was at that point that respondent was handcuffed and placed in the police car. He was then advised of his Miranda[1] rights. Respondent was cooperative at all times. Respondent moved to suppress the hashish on the grounds that the search was invalid under the Fourth Amendment to the United States Constitution and the Arizona Constitution. The motion was denied on the basis that it was a valid search incident to arrest.

Respondent was subsequently convicted of unlawful possession of a narcotic drug. He appealed and the Arizona Court of Appeals reversed his conviction on the basis that the search was invalid under the Fourth Amendment. The State of Arizona filed a

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[1]Miranda v. Arizona, 384 U.S. 436 (1966)

Petition for Review by the Arizona Supreme Court, which was granted but subsequently denied after oral argument as improvidently granted.

REASONS FOR DENYING THE WRIT

A. The Search Incident to Arrest Exception Only Applies to Custodial Arrests; As There Was No Custodial Arrest in this Case, the Opinion Below Correctly Held the Search to be Unreasonable.

In United States v. Robinson, 414 U.S. 218, 94 S.Ct. 467, 38 L.Ed. 2d 427 (1973), this Court stated:

> The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a "reasonable" search under that Amendment.

414 U.S. at 235. The Court emphasized that it is "the fact of custodial arrest which gives rise to the authority to search." 414 U.S. at 236. In a footnote, the Court noted that it was not reaching the question discussed by the Court of Appeals as to what police action was authorized where the officer would simply issue a notice of violation and allow the offender to proceed, which the lower court had found to be analogous to the authority in a Terry-stop situation.[2] 414 U.S. at 236, n.6. However,

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[2] Terry v. Ohio, 392 U.S. 1 (1968).

nothing in the footnote suggests this Court would have considered a cite and release situation to be equivalent to a full-custody arrest as occurred in both Robinson and Gustafson v. Florida, 414 U.S. 260, 265-266, 94 S.Ct. 488, 38 L.Ed. 2d. 456 (1973).[3] In fact, as discussed below, this Court's emphasis upon the dangers inherent in the extended exposure following taking a suspect into custody and transporting him "strongly suggests agreement with the court of appeals disposition." 1 W. LaFave and J. Israel, Criminal Procedure §3.5 at 249 (1984).

The State argues that the opinion below is incorrect because under the majority decision in Robinson as well as the concurring opinion of Justice Powell, it is the fact of a lawful arrest which establishes the right to search and that once a lawful arrest occurs the privacy interest of the Fourth Amendment has been abated to a legitimate governmental concern. Therefore, Petitioner argues, "if the lawful arrest abates the privacy interest protected by the Fourth Amendment, Arizona believes a search incident to the arrest is permissible whether or not the arrestee will be cited and released, or transported to the police station. (Petition for Writ of Certiorari at 15-16). However, Petitioner in its argument has ignored the language contained in both the opinion and the concurring opinion, in discussing the fact that it is a lawful arrest which establishes the authority

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[3]As conceded by Petitioner, Gustafson involved a search incident to an arrest on minor traffic violations where the arrestee was physically taken into custody, thus acknowledging the distinction between physical custody and detention.

to search since in both instances the language is proceeded or followed by the term "custodial arrest." In other words, in Subsection A of its argument, going to the merits of the decision below, the State argues that the search incident to arrest exception should apply to a "cite and release" situation, but offers no rationale supported by a legal analysis for doing so.

The Arizona Court of Appeals was correct in holding that the rationale behind the Robinson exception simply does not apply to the facts of this case. As set out in the decision below, under Robinson a search for weapons and destructible evidence is authorized, even without reason to believe that either would be present, in part because the custodial arrest itself would create a motivation to use a weapon or destroy evidence. See Robinson, 414 U.S. at 234; Petitioner's Appendix A at A-3. In addition, the primary rationale for the search incident to arrest exception as expressed in Robinson is that "the danger to an officer is far greater in the case of the extended exposure which follows the taking of a suspect into custody and transporting him to the police station than in the relatively fleeting contact resulting from the typical Terry-type stop." 414 U.S. at 234-235.

Here, there was no extended exposure to justify the search under the above rationale nor any motivation for evidence to be destroyed absent a custodial arrest. Assuming an arrest, respondent was never "in custody" for purposes of Robinson. Rather, the facts in this case reveal all of the noncoercive aspects similar to an ordinary traffic stop which does not

involve custody. See Berkemer v. McCarty, 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed. 2d. 317 (1984) (discussing custody for purposes of Miranda warnings). Custody for purposes of Miranda is determined by inquiring whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. Berkemer, 468 U.S. at 422. Thus, similar factors govern determination of custody for purposes of a search incident to a custodial arrest. In Berkemer this Court considered a traffic stop as being more like a Terry-type detention than an arrest as it was a minimal intrusion. This Court found the stop not to constitute custody for purposes of Miranda, because of the noncoercive aspect of the ordinary traffic stop. The facts relied upon were that the stop was brief, at no time was the person informed that his detention would not be temporary, the stop was public, and the motorist is typically confronted by at most two policemen, giving it a non-coercive atmosphere.

Here, as in Berkemer, respondent was not at any time between the approach of the officers and the arrest for possession of hashish "subjected to restraints comparable to those associated with a formal arrest." 468 U.S. at 422. As in Berkemer, the detention to issue the citation was brief, the interaction occurred in a public place in front of other park visitors, only two officers approached respondent, respondent was never informed that his detention would not be temporary and in fact he would have reasonably believed from the issuance of the citation that it was entirely temporary. A decision had been made that

respondent was not going to be booked for having an open container of beer in a public park. For all of the above reasons, respondent had not been subjected to a custodial arrest at the time of the search. Therefore, the Court of Appeals correctly held that the search was not valid as a search incident to arrest under Robinson. See 1 W. LaFave and J. Israel, Criminal Procedure §3.5, 248-249 (1984)("custodial arrest" is seizure of the person with the intention of thereafter having him transported to the police station or other place to be dealt with according to law). The dissenting opinion's reliance on Arizona statutes which refer to a citation for a misdemeanor situation as an arrest and subsequent release from custody is unwarranted as a State cannot by statute define a custodial arrest for purposes of Robinson without regard to the Fourth Amendment and its application to the facts of this case. Cf. State v. Martin, 253 NW 2d 404, 406 (Minn. 1977).

As there had not been a lawful custodial arrest at the time of the search, the warrantless search of respondent's person was not justified as a search incident to arrest under Robinson and therefore the Court of Appeals correctly found that the search was unreasonable. Therefore, as the opinion below was correctly decided, the Petition for Writ of Certiorari should be denied.

B. The Purported Conflict Between State Jurisdictions As to Whether The Search Incident to Arrest Exception Applies to a Citation and Release Situation is Illusory.

In part B of its argument as well as in its introductory argument as to why the writ should be granted, Petitioner, the State of Arizona, contends that "[s]ince Robinson, the various jurisdictions and legal commentators have disagreed on the applicability of the search incident to arrest doctrine to a cite and release situation." Petition for Writ of Certiorari at 13, 16. The above statement is unsupported and the purported conflict between the state courts is illusory. For example, the State of Arizona has only referred to one legal commentator, 2 W. LaFave and J. Israel, Criminal Procedure §12.5(b) (1984) at 152-153, who states that under Robinson a search incident to arrest may not be conducted where the officer simply issues a notice of violation and allows the offender to proceed. See also Criminal Procedure, supra, §3.5, at 248-249.

Second, the Petitioner states that the jurisdictions have divided almost equally on the issue, citing decisions in support of both sides. However, a closer look at the cases cited to support the State of Arizona's position shows that this is in fact not the case. In State v. Brantigan, 798 P.2d 1176 (Ct. App. Wash. 1990), the court upheld a search of a suspect arrested for the misdemeanor of possession of narcotics paraphernalia. However, in that case the defendant in moving to suppress relied solely on the after the fact expressed subjective intent of the officer that if he had not found the cocaine he would have

released the defendant on the paraphernalia charge. The Washington court distinguished the case from State v. Carner, 624 P.2d 204 (1981) in which a final search conducted after the decision to release the defendant was made was held to be invalid. Thus taking Brantigan, together with Carner, under the Washington state courts interpretation of the search incident to arrest exception the search in this case, where the decision to issue a citation and release respondent had been made prior to the search, would be held unreasonable. The court's holding that the officer's subjective state of mind is irrelevant is not inconsistent with the correct interpretation of Robinson that the exception does not apply where the officer simply issues a notice of violation and allows the offender to proceed.

In addition, the court's statement that it was controlled by Rawlings v. Kentucky, 448 U.S. 98, 100 S.Ct. 2556, 65 L.Ed. 2d. 633 (1980) further demonstrates that the court was not addressing the issue of whether a search incident to arrest is authorized under Robinson when the officer decides to cite and release the defendant prior to the search. In Rawlings, the police had probable cause to place the suspect under arrest on felony charges and there was no question in that case that the suspect was to be arrested and taken into custody. 448 U.S. at 111. Thus, this Court held that "[w]here the formal arrest followed quickly on the heels of the challenged search of petitioner's person, we do not believe it particularly important that the

search preceded the arrest rather than vice versa." Id.[4]

The State also cites two cases from Florida, State v. Boulia, 522 So. 2d. 528 (Fla. App. 2d. Dist. 1988) and State v. Gonzales, 562 So.2d 705 (Fla. App. 3d. Dist. 1990)(Nesbitt, J., specially concurring). However, in Boulia the court upheld the search at issue, but did so, as in Brantigan without reaching the question concerning the permissible scope of a search incident to arrest when a notice to appear in lieu of a physical arrest is utilized by the arresting officer. 522 So.2d at 530. Again, the court merely found that the officer's after the fact subjective intent was held not dispositive. Gonzales, supra, was decided on the basis of a valid search for weapons; the Petitioner's reference to the concurring opinion does not provide a conflict among the jurisdictions. See also footnote 4.

People v. Palmer, 342 NE 2d. 352 (Ill. 1976), an Illinois decision, upheld a search without any reference to Robinson or any discussion of the cite and release situation. See 342 NE 2d. at 354; see also 342 NE 2d. at 356 (Goldenhersh, J., dissenting). Rather, the defendant's argument appeared to be based primarily on the absence of facts to conduct a pat down for weapons. 342 NE 2d at 354, and the court upheld the search on the grounds that "the decisions of this Court have consistently held that the

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[4]A similar reliance on Rawlings, supra, in State v. Boulia, 522 So. 2d 528 (Fla. App. 2d. Dist. 1988) and the concurring opinion in State v. Gonzales, 562 So. 2d 705 (Fla. App. 3d. Dist. 1990) shows the focus of those opinions was not on the more narrow question presented here of the authority to search where there is a predetermined decision to cite and release the suspect.

absence of license plates suggests a serious violation of the law which justifies a search." Id. In State v. King, 142 Wis. 2d. 207, 418 NW 2d 11 (Ct. App. 1987), which the Petitioner refers to as finding no distinction between a custodial and a noncustodial arrest, the distinction between custodial arrest and noncustodial arrest raised by the defendant was in the context of his argument under applicable statutes that there was no authority to take him into custody on civil violations. 418 NW 2d. at 13. King was searched for weapons prior to being transported to the station to post bond. The court blankly stated that he was lawfully arrested for the two traffic tickets and that the search of his person was not unconstitutional. Id. The issue of whether the search incident to arrest exception under Robinson applies to a cite and release situation was not addressed.

Unlike the cases cited by the Petitioner as allowing search incident to any "arrest" including the cite and release situation, the cases it cites as arriving at the opposite conclusion do address the issue. For instance, State v. Breaux, 329 So. 2d 696 (La. 1976) is directly on point on the issue raised by the facts of the instant case, i.e., whether a temporary detention of a person for purposes of issuing a summons, in that case for a traffic offense, justifies without more reason, a full search of his person. 329 So. 2d. at 698. The court interpreted Robinson to authorize a search incident to arrest only when there has been a full-custody arrest reasonably made for the purpose of booking the person. 329 So. 2d at 699.

In addition, the court found that no custodial arrest had occurred, rather, "the only police officer who had probable cause to make an arrest, had already determined instead to issue a summons (ticket) for the traffic offense..." 329 So. 2d at 699. The court thus held that under both the federal constitution and the state constitution the search was invalid as there had been no custodial arrest. 329 So. 2d at 700. The other cases cited as reaching results consistent with the Arizona Court of Appeals also address the issue of the application of the search incident to arrest exception to noncustodial arrest. (Petition for Writ of Certiorari at 20-21) See also State v. Davis, 477 So. 2d 504 (Ct. Cr. App. Ala. 1985)(under Robinson there is no authority for a full search absent the fact of a lawful custodial arrest); State v. Darrah, 64 Ohio St. 2d. 22, 412 NE 2d. 1328, 1331 (1980) (receipt of traffic citation is not functional equivalent of arrest); United States v. Suarez, 694 F. Supp. 926, 937 (U.S.D. Ct. S.D. Ga. 1988) (because traffic stops are typically non-custodial, the officer lacks the authority to search pursuant to Robinson); People v. Klein, 115 Ill. App. 3d. 582, 450 NE 2d. 1268, 1271 (1983)(warrantless search of accused is proper where a custodial arrest is actually made; whether or not a custodial arrest is made depends not on the label attached to police action, but on the degree of intrusion made upon interests protected by the Fourth Amendment).

The Petitioner's argument that there is a division in the state jurisdictions on whether a search incident to arrest

exception applies to a cite and release situation, especially under the narrow facts of this case, is illusory and thus resolution of the issue is not a significant reason for this Court to grant the petition. Therefore, the Petition for Writ of Certiorari should be denied.

C. The Petitioner Has Overstated the Importance of the Arizona Court of Appeals' Holding, As the Issue is Narrow and Interests of Officer Safety Are Fully Protected.

Petitioner argues that the Arizona Court of Appeals' decision requires that the officer must determine at the inception of an arrest for a petty or misdemeanor offense whether the arrestee will be field released or transported to the station and that this requirement seriously interferes with police safety and authority to investigate. (Petition for Writ of Certiorari at 22-24). This argument is wholly specious. First, the decision below does not make any such requirement; rather, it only found that once the officer had decided to cite and release the suspect, a search was not justified[5]. (See Petitioner's Appendix A at A-2). Compare State v. Calabrese, 157 Ariz. 189, 755 P.2d. 1177 (App. 1988). Thus Petitioner's argument that an officer needs sufficient time to complete the investigation and evaluate the dynamic circumstances prior to deciding whether or not to release the suspect is not impeded whatsoever by the decision below. With regard to officer safety, those concerns are fully met by the officer's authority to do a pat down search for weapons where justified. See Terry v. Ohio, supra. The only limitation on the officer's authority under the decision below is that the officer is not free to do a full search of a person to look for items of evidentiary value not connected to the

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[5]Petitioner's statement that in Arizona before a person may be released pursuant to a cite and release procedure, the officers must run a warrant check is not supported by anything in the record.

misdemeanor for which the suspect has been detained prior to making a custodial arrest. However, this limitation is nothing new but is premised on the entire development of fourth amendment doctrine. What the State seeks is to be able to search a person detained for a misdemeanor to see what evidence might be on their person as part of its investigation in determining whether to cite and release or take that person into custody, when there is no legitimate interest at that time for such a search.

Petitioner argues further that by requiring that the officers may not engage in a full search of the defendant unless the defendant is to be transported to the station, the "Arizona Court of Appeals requires law enforcement officers to conduct a more intrusive procedure in order to justify a less intrusive one," citing California v. Acevedo; ____U.S.___, 111 S.Ct. 1982, 114 L.Ed. 2d. 619 (1991). (Petition for Writ at 24) It is not the Arizona Court of Appeals reasoning that is backwards, but rather Petitioner's. In California v. Acevedo, this Court held that it made no sense to allow the police to search an automobile when there was probable cause to do so but to require a search warrant for a container in a vehicle for which they have probable cause to search merely because they lack probable cause to search the entire car. 114 L.Ed. 2d. at 630-631. In that context this Court also said that requiring officers who had probable cause to search the vehicle to in fact search the entire vehicle when they otherwise would choose only to search packages inside the vehicle was senseless as there was no benefit of a rule that requires law

enforcement officers to conduct a more intrusive search in order to justify a less intrusive one. 114 L.Ed. 2d. at 631. In Acevedo, the officers had a basis for both searches, i.e., probable cause. Here, the Petitioner's argument that to require the police to take an arrestee into custody in order that they may conduct a full search of the person requires police to conduct a more intrusive procedure in order to justify a less intrusive one is premised on the faulty proposition that they have a right to search the person absent a custodial arrest. What the Petitioner is actually proposing is that the Court of Appeals' decision will force the police to make pretextual custodial arrests solely in order to provide a justification to search for evidence. Should such police conduct in fact result from the Court of Appeals' adherence in this case to Robinson and established fourth amendment principles, then the issue of pretext custodial arrests may have to be litigated. However that is not the issue presented in this case.[6] As discussed in Argument A, supra, there were no objective factors which clearly justified the officer's action and the decision below rests upon Robinson not on a finding of a pretextual arrest.

The Petitioner has overstated the importance of the Arizona

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[6]The Petitioner has incorrectly stated the basis of the Court of Appeals decision was to prevent pretext arrests. Petition for Writ of Certiorari at 10, 24-25. While this was not the basis for the Court's holding, Respondent would point out that Petitioner's assertion that there is nothing in the record that would show a pretextual search in this case is incorrect; Officer Morand only searched respondent because he hoped to find evidence of other offenses. See Statement of the Case, supra at 6.

Court of Appeals' holding. The issue decided is very narrow and does not have the effect of interfering with interests of law enforcement in investigation and officer safety. Therefore, the Petition for Writ of Certiorari should be denied.

CONCLUSION

The Arizona Court of Appeals correctly interpreted this Court's decision in United States v. Robinson in ordering that the motion to suppress be granted. Additionally, the purported conflict between jurisdictions and commentators is illusory and the Petitioner has overstated the importance of the holding below and the need for this Court to grant the Petition for the universal safety and protection of law enforcement personnel. Therefore, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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STATE OF ARIZONA)
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DONALD S. KLEIN, a member of the bar of this Court, being duly sworn upon oath, deposes and says: that he served three (3) copies of the Response to Petition for Writ upon

Paul J. McMurdie
Assistant Attorney General
Department of Law
1275 West Washington
Phoenix, Arizona 85007

by depositing the same in the United States mail, with first class postage prepaid.

DATED this 28th day of March, 1992.

Donald S. Klein

DONALD S. KLEIN
Attorney for Respondent

SUBSCRIBED AND SWORN to before me this 28th day of March, 1992, by DONALD S. KLEIN.

Notary Public

My Commission Expires:
My commission expires September 6, 1995